

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

MONROE DIVISION

JACK BRADLEY DAILEY

CIVIL ACTION NO. 05-1472

VERSUS

JUDGE ROBERT G. JAMES

DOLLAR GENERAL STORES LTD

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER

On November 3, 2005, Defendant Dolgencorp, Inc. (referred to as “Dollar General Stores Ltd”) filed a “Motion to Appeal Decision of Magistrate Judge” [Doc. No. 20], appealing the October 20, 2005 Order of Remand [Doc. No. 20] issued by Magistrate Judge Karen L. Hayes. Plaintiff did not respond to Defendant’s appeal.

The Fifth Circuit has not addressed what standard should be applied to a district court’s review of a magistrate judge’s ruling on a motion to remand. However, district courts in this circuit have generally found that a motion to remand is a non-dispositive pretrial matter and have applied the clearly erroneous/contrary to law standard pursuant to 28 U.S.C. § 636(b)(1)(A) and Rule 72(a) of the Federal Rules of Civil Procedure. *See, e.g., Lonkowski v. R.J. Reynolds Tobacco Co.*, No. 96-1192, 1996 WL 888182, at *2-4 (W.D. La. Dec. 10, 1996), *Vaquillas Ranch Co., Ltd. v. Texaco Exploration and Production, Inc.*, 844 F. Supp. 1156, 1162 (S.D. Tex. 1994). This Court agrees and applies the clearly erroneous standard of review.

Following a review of the record, together with the parties’ memoranda, the Court finds that Magistrate Judge Hayes’ Order of Remand is not clearly erroneous nor contrary to the law.

However, Magistrate Judge Hayes did not address Plaintiff’s request for attorney’s fees and costs for filing the Motion to Remand. While the Court agrees with Magistrate Judge Hayes

that the jurisdictional amount is not met, the Court finds that there was an “objectively reasonable basis” for Defendant to remove this case to federal court. *Martin v. Franklin Capital Corp.*, 126 S. Ct. 704, 711 (2005).

IT IS ORDERED that Defendant’s “Motion to Appeal Decision of Magistrate Judge” [Doc. No. 20] is DENIED, and the Magistrate Judge’s Order of Remand [Doc. No. 20] is AFFIRMED. This case is REMANDED to the Third Judicial District Court, Parish of Lincoln, State of Louisiana, for further proceedings.

IT IS FURTHER ORDERED that Plaintiff’s request for attorney’s fees and costs is DENIED.

MONROE, LOUISIANA, this 30th day of January, 2006.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE